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OFFICE OF PETITIONS

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In re Application of Watson : Decision on Petition
Application No. 09/453,800 :
Filing Date: December 3, 1999 :
Attorney Docket No. CITI0125-US :

This is a decision on the petition under 37 CFR 1.137(b) filed June 24, 2011, which requests revival of the application.

The petition is **granted**.

Background

The Office mailed a final Office action on January 12, 2005. The Office action stated claims 1-21 are pending and that claims 1-21 are rejected.

A notice of appeal was filed July 11, 2005.

The Office mailed an Examiner's Answer containing one or more new grounds for rejection on July 8, 2009.

37 CFR 41.50(a)(2) states,

If a supplemental examiner's answer is written in response to a remand by the Board for further consideration of a rejection pursuant to paragraph (a)(1) of this section, the appellant must within two months from the date of the supplemental examiner's answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the rejection for which the Board has remanded the proceeding:

- (i) Reopen prosecution. Request that prosecution be reopened before the examiner by filing a reply under § 1.111 of this title with or without amendment or submission of affidavits (§§ 1.130, 1.131 or 1.132 of this title) or other evidence. Any amendment or submission of affidavits or other evidence must be relevant to the issues set forth in the remand or raised in the supplemental examiner's answer. A request that complies with this paragraph will be entered

and the application or the patent under ex parte reexamination will be reconsidered by the examiner under the provisions of § 1.112 of this title. Any request that prosecution be reopened under this paragraph will be treated as a request to withdraw the appeal.

(ii) Maintain appeal. Request that the appeal be maintained by filing a reply brief as provided in § 41.41. If such a reply brief is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the examiner under paragraph (a)(2)(i) of this section.

Applicant did not file a reply under 37 CFR 1.111 or a reply brief.

The Board issued an order dismissing the appeal and terminating consideration of the rejected claims on June 7, 2011.

Since no claims stood allowed, the application became abandoned on June 8, 2011.

The instant petition was filed June 24, 2011.

Analysis

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed,
- (2) The petition fee, and
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional.¹

The petition satisfies the requirements of 37 CFR 1.137(b) in so far as petitioner has supplied (1) a reply in the form of an amendment filed with the petition, (2) the required petition fee of \$1,620, and (3) the required statement of unintentional delay. Therefore, the petition is granted and the application is revived.

Technology Center Art Unit 3653 will be informed of the instant decision and the application, including the amendment filed June 24, 2011, will be further examined in due course.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

¹ A terminal disclaimer is also necessary if the application is a design application or if the application was filed on or before June 8, 1995.